

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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REDEEMED TEMPLE COMMUNITY  
DEVELOPMENT CORPORATION and  
REDEEMED TEMPLE,

UNPUBLISHED  
February 13, 2014

Plaintiffs-Appellees,

v

JACKSON LAND HOLDINGS,

No. 311921  
Wayne Circuit Court  
LC No. 11-006471-CH

Defendant-Appellant.

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Before: MURPHY, C.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this real property dispute, defendant Jackson Land Holdings (Jackson Holdings)<sup>1</sup> appeals of right the trial court's judgment ordering it to transfer a parcel of real property to plaintiff Redeemed Temple Community Development Corporation (Temple Development), ordering Temple Development to transfer one parcel of real property to Jackson Holdings, and ordering Jackson Holdings to pay \$74,871.89 to Temple Development as compensation for the transfer. Because we conclude there were no errors warranting relief, we affirm.

**I. BASIC FACTS**

Ulysses Leonard Norris testified at the bench trial that he had been the pastor for Redeemed Temple, which is an ecclesiastical corporation, since 1995. In around 2001, Redeemed Temple formed Temple Development "to build new houses, to improve the neighborhood" and to serve as "a base for the church so the church can survive."

In December 2002, Redeemed Temple entered into an agreement to purchase seven contiguous residential lots—lots 67 through 73—on Goodwin Street in the City of Detroit. The homes that were formerly on the lots had the following addresses: lot 67 was 9505 Goodwin, lot 68 was 9511 Goodwin, lot 69 was 9515 Goodwin, lot 70 was 9521 Goodwin, lot 71 was 9525 Goodwin, lot 72 was 9531 Goodwin, and lot 73 was 9539 Goodwin. Redeemed Temple paid

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<sup>1</sup> Jackson Holdings is a limited liability company.

\$12,600 for the lots at issue in addition to several other lots in the neighborhood. The city deeded the lots to Redeemed Temple in April 2003. In December of that same year, Redeemed Temple deeded lots 67 through 72 to Temple Development.

Norris stated that Redeemed Temple originally purchased the lots for parking spaces, but deeded the land to Temple Development in order to try and improve the church's neighborhood. Temple Development submitted blueprints for two separate duplexes to the city for approval. After the city approved the blueprints, Temple Development financed and built the duplexes on the seven lots. One of the duplexes sits on lots 67, 68, and 69. The other duplex sits on lots 70, 71, 72, and a portion of lot 73. Norris stated that after they decided to build the duplexes, he had to select four of the house numbers that had previously existed to serve as the house numbers for the units in the new duplexes. He selected 9505 and 9511 Goodwin for the two units in the duplex that sits on lots 67, 68, and 69; and he selected 9515 and 9539 Goodwin for the two units in the duplex that sits on lots 70, 71, 72, and 73. Norris stated that the duplexes each cost \$128,000 to build and that they made the final payment on the note that was used to fund the project in early 2012 or at the end of 2011.

Originally the seven lots were not subject to property tax. Norris testified, however, that the lots began to be taxed after Temple Development built the duplexes. Although the tax was limited at first, he stated that the amounts soon increased dramatically. After the increase in taxes, Norris took steps to get the taxes reduced, but was unable to pay the taxes on some of the lots in the interim.

Because Temple Development did not pay the taxes on some of the lots, Wayne County took title to the lots and sold them. The county deeded lots 67, 70, 71, and 72 to Jackson Holdings in November 2010. In the quit claim deeds, the county correctly identified the lot numbers, but also referred to the old addresses that no longer corresponded to the homes actually located on the lots. Accordingly, the deeds showed that Jackson Holdings now owned the properties commonly known as 9505, 9521, 9526, and 9531 Goodwin. After the county transferred these lots, Jackson Holdings owned only one of the three lots underlying the duplex with the two units whose addresses were 9505 and 9511 Goodwin, but owned three of the four lots underlying the duplex with the units whose addresses were 9515 and 9539 Goodwin.

Norris testified that he was not aware that the city had sold some of the lots underlying the duplexes until his daughter, who lived in the unit whose address was 9505 Goodwin, informed him that a company was trying to evict her. He stated that each of the units got a notice that the residents had "to get out [of] the house." Norris felt the situation was unfair and discouraging; Jackson Holdings contributed nothing to develop the land and did nothing to maintain the lots—Redeemed Temple maintained the lots—but when he called Jackson Holdings, it claimed to own both duplexes. He also described how Jackson Holdings broke into the units and changed the locks, secured the garages, and shut off the water.

Norris stated that, as of the bench trial, there was more than \$17,000 in taxes owed on lot 67, about \$226 owed on lot 68, more than \$67,000 owed on lot 69, no tax owed on lots 70 or 71, more than \$16,000 owed on lot 72, and no tax owed on lot 73. Because of the discrepancy between the tax owed on lots 67 and 73, Norris felt that Jackson Holdings' preferred solution to

the property dispute—a forced swap of lots 67 and 73, which would leave both parties owning all the land under one duplex—was inequitable.

Matt Tatarian testified that he was one of Jackson Holdings’ owners. He stated that Jackson Holdings purchased the four lots that had previously belonged to Temple Development from the county for \$500 each. The low price reflects the fact that, with many of these purchases, the property ends up in “in litigation and we don’t know the outcome . . . .” That is why his company “automatically” shuts off the water to the newly acquired properties; even if Jackson Holdings prevails in the litigation, it becomes liable for the water bills that accrued during the dispute. He explained that the expenses have to be averaged out “over many properties. You don’t just buy a property, you buy a lot of ’em . . . .” A few, he stated, will end up justifying the “investment.”

For the present properties, Jackson Holdings knew that the lots had duplexes on them, but he denied that the company was “buying a lawsuit.” He stated that it was never his intent to end up in litigation: “Our intent is never to come here. Our intent is to make a deal if somebody would be—if we were being somewhat reasonable that we would walk away from this, and we would have.” When asked how he hoped to resolve the dispute given that the duplexes were partly on land that Jackson Holdings owned and partly on property that Redeemed Temple and Temple Development owned, he thought that each side should get one duplex.

After hearing the proofs, the trial court agreed that the best solution to the parties’ dispute was to do as Jackson Holdings had suggested and “swap” lots with the result that each party will own the land underlying one duplex:

The Court is satisfied that partition is appropriate and to effectuate the partition in equity the Court is satisfied that lot 73, which is owned by the Redeemed Temple, should be awarded to Jackson Holding and lot 67 should be transferred from Jackson Holding to, I think the proper person to have the deed issued to is Redeemed Temple Community Development Corporation.

The trial court, however, did not agree that this solution was sufficient by itself to resolve the equities between the parties. Rather, “because [Temple Development] put in so much money for all seven lots compared to what [Jackson Holdings] paid for four lots”, the court concluded that Jackson Holdings should have to pay some compensation for the exchange. Accordingly, it ordered Jackson Holdings to compensate Temple Development for lot 73 by paying one-seventh of the cost to develop the duplexes, which the trial court calculated to be \$73,228. After adjusting that amount for the \$500 that Jackson Holdings paid for the lot that it exchanged with Temple Development, the court ordered Jackson Holdings to pay Temple Development \$72,728.

The trial court entered the Judgment ordering the exchange of lots and compensation in July 2012. After adjusting the judgment to include statutory interest, Jackson Holdings had to pay Temple Development \$74,871.89.

Jackson Holdings now appeals.

## II. EQUITY

### A. STANDARDS OF REVIEW

On appeal, Jackson Holdings argues that Temple Development lacked standing under the partition statutes and, as a result, the trial court could not rely on those statutes to adjust the equities between the parties by ordering Jackson Holdings to compensate Temple Development for the exchange in lots. Even if the trial court had the authority to adjust the equities, Jackson Holdings further argues, it erred when it ordered Jackson Holdings to pay an amount equal to one-seventh of Temple Development's cost to develop the seven lots. Rather, it maintains, the trial court should have calculated the fair market value of the lots to be exchanged and ordered compensation equal to the difference in fair market value, which it argues would properly result in Temple Development paying \$6,666.67 to Jackson Holdings.

This Court reviews de novo the proper interpretation and application of the common law. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012). This Court also reviews de novo a trial court's exercise of its equitable powers. *Beach v Lima Twp*, 489 Mich 99, 106; 802 NW2d 1 (2011). This Court, however, reviews the factual findings underlying a trial court's application of the law for clear error. *In re Perry Trust*, 299 Mich App 525, 529; 831 NW2d 251 (2013). Finally, this Court reviews de novo whether a trial court correctly selected, interpreted, and applied the relevant statutes. *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013).

### B. EQUITABLE POWER TO ORDER COMPENSATION

On appeal, Jackson Holdings argues that the trial court could not award Temple Development any compensation for its improvements to lots 67, 70, 71, and 72 because MCL 211.78k(6) extinguished Temple Development's interest in those lots. Jackson Holdings similarly argues that, because the dispute at issue did not actually involve a true partition, Temple Development could "not seek an adjustment of the equities" under the statutory provisions governing partition. See MCL 600.3336(2).

At the bench trial, Redeemed Temple and Temple Development did not argue that they had any continuing interest in lots 67, 70, 71, or 72, and the trial court agreed that they did not have any interest in those lots. Moreover, although the trial court expressed its belief that equity required some compensation because Temple Development invested a substantial amount in the improvement of the seven lots, which investment was now accruing to Jackson Holding's benefit, it did not order Jackson Holdings to compensate Temple Development for the improvements to lots 67, 70, 71, and 72; rather it used the total cost of the development to calculate Temple Development's cost basis for lot 73. As such, whether MCL 211.78k(6) applied was not and is not at issue.

We agree, however, that this dispute did not involve a typical action for partition. Although Temple Development developed the lots as though they were a contiguous whole, it did not seek to join the lots to better permit future transfers of the duplexes or their individual units. Instead, it left each lot separate. Because Temple Development, Redeemed Temple, and Jackson Holdings did not own any lot in common, notwithstanding that the duplexes spanned

lots that were owned by different entities, there was no need to partition an existing lot between co-owners. See MCL 600.3304 (providing that an action for partition may be brought by persons holding land as joint tenants or as tenants in common). Accordingly, the statutory provision for the adjustment of equities in a partition action—MCL 600.3336(2)—would not normally apply. Nevertheless, we do not believe that the trial court’s reliance on its equitable power to partition amounted to error warranting relief because Jackson Holdings’ lawyer conceded that the trial court had the power to act in equity to resolve the parties’ dispute.

At the close of proofs, the trial court expressed its concern that Jackson Holdings’ proposed remedy—a swap of lots—was not really within the partition statute; in reply, Jackson Holdings’ lawyer conceded that, even if the claim was not one for partition, the trial court had the authority to grant relief in equity:

THE COURT:           What do you recommend?

MR. LeFEVRE:        In this case?

THE COURT:           I mean, he told me what his [(referring to Temple Development’s lawyer)] remedy is. I mean, you want to swap. Swap, is that the same thing as partition? It’s—

MR. LeFEVRE:        Well, in this case the partition, Judge, would be exactly—that would be one way to accomplish this partition in order to make these buildings work.

THE COURT:           And that complies with the statute. That’s what partition means, you just swap the land.

MR. LeFEVRE:        I’m not exactly [sure] what the statute calls for. But again, your Honor, with equitable powers I think it’s something that you could do, yes.

Because Jackson Holdings took the position at trial that the court had the equitable power to resolve the parties’ dispute, whether under the partition statute or otherwise, it cannot now take the position that the trial court lacked the power to act in equity or only had a limited power to act in equity. See *Grant v AAA Mich/Wisconsin, Inc (On Remand)*, 272 Mich App 142, 148; 724 NW2d 498 (2006) (“A party who expressly agrees with an issue in the trial court cannot then take a contrary position on appeal.”); *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002) (stating that a party may not harbor error as an appellate parachute).

Even if the trial court could not rely on the statutory provisions related to partition, it nevertheless had the power to resolve the dispute at issue by granting injunctive relief along with compensation. The underlying action might more aptly be characterized as an action to resolve competing claims of encroachment. See MCL 600.2932(1) (providing that circuit courts have jurisdiction to hear claims involving a person’s “right in, title to, equitable title to, interest in, or right to possession of land”). And the trial court’s jurisdiction to resolve disputes over encroachments is equitable and includes both the power to order injunctive relief or financial compensation. MCL 600.2932(5) (“Actions under this section are equitable in nature.”); *Kratze v Independent Order of Oddfellows*, 442 Mich 136, 141-145; 500 NW2d 115 (1993) (discussing

the balance of factors that must be considered by a trial court sitting in equity when resolving disputes over encroachments and describing possible remedies).

Therefore, given that Jackson Holdings conceded the trial court's authority to act in equity and that the trial court actually had the authority to act in equity, the trial court's belief that its authority arose from the statutes governing partition—even if error—would not warrant relief.

### C. BALANCING THE EQUITIES

Jackson Holdings also argues that, even if the trial court had the authority to adjust the equities by ordering compensation in addition to the exchange of lots, its decision to order Jackson Holdings to pay almost \$75,000 in compensation was not “supported by evidence or statute.”<sup>2</sup> Although framed as a challenge to the factual and statutory support for the trial court's decision, as already noted, Jackson Holdings effectively waived any challenge to the trial court's exercise of equity to resolve the dispute and balance the rights of the parties. Moreover, it is evident from Jackson Holdings' argument that it does not actually contest the evidentiary support for the amount Temple Development spent to construct the improvements on the seven lots. Rather, it argues that it would have been more equitable for the trial court to use the fair market value of the lots to be exchanged when balancing the equities. Using that value, Jackson Holdings maintains, Temple Development should have to compensate Jackson Holdings for the exchange because the lot it received was worth more than the lot that it transferred to Jackson Holdings.

The difficulty with this position is that there is no evidence concerning the actual value of the lots at issue under the circumstances involved in this case. The lots plainly could not be valued as though the owner of the lot had an undivided interest in the duplexes on the lots or a value equal to some percentage of the total value of the duplexes or their units. Rather, because only a small part of the duplexes are on lots 67 and 73 and the remaining portion of those lots likely cannot support an improvement, whatever independent value those lots have is likely severely limited; indeed, their value may reside solely in the ability of the lot's owner to interfere with the adjacent lots' owner's use and enjoyment of the duplexes. Because there was inadequate evidence in the record to determine the independent value of the lots under the facts existing at the time of trial, the trial court did not err when it determined that it should balance the equities using a different valuation. Thus, the remaining issue is whether the trial court's balancing of the equities was proper under the facts.

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<sup>2</sup> Jackson Holdings also argues that the trial court itself stated that its resolution was inequitable. However, the trial court actually stated that its order may “seem” inequitable given the problems with the real estate market; when taken in context, it is clear that the trial court felt that the forced transfer and compensation was the fairest resolution of the real property dispute.

“A court acting in equity ‘looks at the whole situation and grants or withholds relief as good conscience dictates.’” *Mich Nat’l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992), quoting *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951). As our Supreme Court has stated, “[f]ashioning an appropriate remedy where a structure encroaches on the land of another poses special problems and has resulted in special solutions.” *Kratze*, 442 Mich at 142. Courts should be careful to balance the equities to avoid permitting a party to effectively seize property by private eminent domain or to extort inordinate compensation for otherwise insignificant encroachments. *Id.* at 143-144 n 9.

Here, Temple Development and Jackson Holdings each owned lots underlying nearly one whole duplex and each owned another lot underlying a smaller fraction of the others’ duplex. Under these circumstances, each could significantly interfere with the others’ use and enjoyment of either duplex, which in turn might impair the value of all the land and improvements at issue. For that reason, the trial court correctly determined that the actual and potential dispute could best be solved by entering an order compelling the parties to exchange the outlying lots so that each owned all the lots under one duplex. By ordering the transfer of these lots, the trial court ensured that each party owned all the land underlying one duplex, which in turn ensured that neither party could interfere with the other’s use and enjoyment of its own duplex or interfere with the lease or sale of the individual units.

However, in fashioning an appropriate remedy, the trial court could also consider whether one of the parties bore partial responsibility for the problems giving rise to the dispute; it could properly consider Jackson Holdings character, conduct, and motives in acquiring the property and balance those considerations against Temple Development’s involvement. *Id.* at 144-146. The trial court found that Temple Development invested heavily in the improvement of the lots, which included the lot that it was now being forced to transfer to Jackson Holdings. It then contrasted Temple Development’s proportionate investment of more than \$73,000 in each of the original seven lots to Jackson Holdings investment of only \$500 in each lot. That is, the trial court recognized that Jackson Holdings invested an insignificant amount by comparison with Temple Development and yet stood to profit considerably from Temple Development’s efforts to improve the lots. There was also record evidence that Jackson Holdings knew that there were new duplexes on the lots, knew that its purchase was likely to lead to a dispute, and nevertheless purchased the lots in order to have the opportunity to obtain a deal that would justify its investment. Indeed, Tatarian testified that he would have “walk[ed] away from this” dispute had Temple Development made a reasonable offer. Under these facts, we cannot conclude that the trial court overstepped its authority by balancing the equities involved in the forced transfer in the manner that it did. Considering the totality of the circumstances, the trial court’s decision to apportion Temple Development’s investment in the duplexes over the seven lots and then order Jackson Holdings to pay the difference between its cost basis and Temple Development’s cost basis was equitable.

### III. CONCLUSION

The trial court did not err when it applied equity to resolve the parties' dispute over the ownership of the duplexes and the underlying lots by ordering the transfer of the outlying lots. It also did not err when it ordered Jackson Holdings to compensate Temple Development for the difference between the parties' investments in the lots subject to the transfer.

There were no errors warranting relief.

Affirmed. As the prevailing parties, Redeemed Temple and Temple Development may tax their costs. MCR 7.219(A).

/s/ William B. Murphy  
/s/ Michael J. Kelly  
/s/ Amy Ronayne Krause